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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,498	04/07/2004	Samuel D. Davis	742007-1020	7407

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THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP  
100 GALLERIA PARKWAY, NW  
STE 1750  
ATLANTA, GA 30339-5948

EXAMINER

GELIN, JEAN ALLAND

ART UNIT PAPER NUMBER

2617

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/820,498

Applicant(s)

DAVIS ET AL.

Examiner

Jean A. Gelin

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This is in response to the Applicant's arguments and amendments filed on July 27, 2006 in which claims 1-3, 6, 9-11, 18, 19, 22, 23, 25, 36-39, 41, 43, and 44 have been amended. Claims 1-46 are currently pending.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-46, the phrase "capable of" or "adapted to" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re, Hutchison, 69 USPQ 138.

4. Claims 37 and 44 recite the limitation "the second IP address" in lines 2-4, 6-7 of claim 37 and lines 3-6 of claim 44. There is insufficient antecedent basis for this limitation in the claim.

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5. Claims 38 and 39 recite the limitation "the second identification code" in line 3 of claim 38 and line 3 of claim 39. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: a transceiver that receives a first IP address.

7. Claims 38 and 39 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: a transceiver that receives a first identification code.

8. Claim 44 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: receiving a first IP address.

Claims 40-46 are also rejected because they depend on claims 37 and 39.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 37 and 41-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGarry et al. (US 6,038,491) in view of Peters (US 6,601,093).

Regarding claims 37 and 44, McGarry teaches a remote telemetry device (22) comprising: a transceiver that receives a second identification code (col. 6, lines 16-31); the second identification code being capable of being changed to a new second identification code (col. 11, line 6 to col. 12, line 54); and a processing device coupled to the transceiver, the processing device being capable of detecting the new second identification code, wherein said transceiver transmits the new second identification code via a cellular network (col. 11, line 16 to col. 12, line 54).

McGarry fails to disclose receiving an IP address and the IP address is changed to a new IP address.

However, the preceding limitation is known in the art of communications. Peters teaches determining whether there is a need to change the IP address of a communication (col. 3, lines 50-55), transmitting IP to a second communication device which can be cellular phone receiving the IP address over the network, storing the IP address at the communication, and using the IP address for communication from a first communication to a second communication device (col. 3, line 20 to col. 4, line 7 and col. 8, line 56 to col. 9, line 45). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Peters within the system of McGarry in order to provide a technique whereby a device may receive information about other devices' IP addresses and the source of those addresses, and efficiently uses this information for communicating with such devices.

Regarding claims 41 and 45, McGarry in view of Peters teaches all the limitations above. McGarry further teaches a connecting terminal that is coupled to the processing device and a remote data collection device, the connecting terminal being capable of facilitating communication between the remote data collection device and the remote telemetry device (col. 9, lines 8-34).

Regarding claim 42, McGarry in view of Peters teaches all the limitations above. McGarry further teaches the connecting terminal is one of an Ethernet, serial, and modem connection (col. 9, lines 8-54).

Regarding claims 43 and 46, McGarry in view of Peters teaches all the limitations above. McGarry further teaches wherein the processing device is capable of receiving data from the remote data collection device and instructing the transceiver to send the data to a central data acquisition system (col. 5, lines 17-33, col. 9, lines 8-54).

#### ***Allowable Subject Matter***

11. Claims 1-36, 38, and 39 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

#### ***Response to Arguments***

12. Applicant's arguments with respect to claims 1-46 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lauber et al.	US 2004/0077347	04/22/2004
Chamberlain et al.	US 2002/0067284	06/06/2002
Petite et al.	US 7,053,767	05/30/2006

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

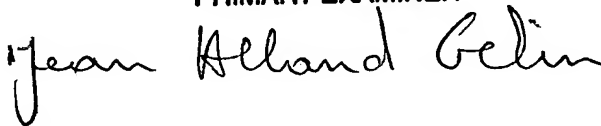
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A. Gelin whose telephone number is (571) 272-7842. The examiner can normally be reached on 9:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Banks-Harold Marsha can be reached on (571) 272-7905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGelin  
October 5, 2006

**JEAN GELIN**  
**PRIMARY EXAMINER**

A handwritten signature in cursive script that reads "Jean Harold Gelin".